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SINHDARELLA, INC.

UNITED STATES DISTRICT COURT
NORTHERN DISTRICT OF CALIFORNIA

SINHDARELLA, INC., a California
corporation,

Plaintiff,

v.

KEVIN VU, an individual, d/b/a/ THE
BOILING CRAB; CAFE BONITA, INC.,
a California corporation; and DOES 2
through 10,

Defendants.

CASE NO. C 07-04353 WHA

Honorable William H. Alsup

**SECOND SUPPLEMENTAL
DECLARATION OF MICHAEL W. DE
VRIES IN SUPPORT OF PLAINTIFF
SINHDARELLA, INC.'S MOTION FOR
PRELIMINARY INJUNCTION**

Date: February 7, 2008
Time: 8:00 a.m.
Courtroom: 9

Pursuant to the Court's statement at the February 7, 2008 hearing on plaintiff Sinhdarella, Inc.'s Motion for Preliminary Injunction authorizing the submission of this supplemental declaration containing additional evidence presented by counsel for plaintiff at that hearing, plaintiff Sinhdarella, Inc. hereby submits the Second Supplemental Declaration of Michael W. De Vries and attached exhibits in further support of its Motion for Preliminary Injunction. For the convenience of the Court, please note that the Supplemental Declaration of Michael W. De Vries that was handed up to the Court (and then returned) during the aforementioned hearing is being renamed the "Second Supplemental Declaration of Michael W. De Vries" and, in addition to containing everything included in the Supplemental Declaration of Michael W. De Vries that was handed up to the Court during the hearing, also now attaches additional evidence presented to the Court by counsel for plaintiff at the hearing:

SECOND SUPPLEMENTAL DECLARATION OF MICHAEL W. DE VRIES

I, Michael W. De Vries, hereby declare under penalty of perjury that:

1. I am an active member of the State Bar of California and an attorney with the law firm of Latham & Watkins LLP, counsel of record for plaintiff Sinhdarella, Inc. The facts set forth herein are within my personal knowledge, and if called as a witness, I could and would testify competently thereto.

Department of Planning and Investment of Ho Chi Minh City

2. Attached hereto as **Exhibit A** is a true and correct copy of a .pdf file rendering of the web page appearing at www.vnnic.vn/english/5-6-300-1-2-04-20071115.htm on February 5, 2008. This document states that the "GOV.VN" domain name extension is used by "central- and local-level State agencies and organizations."
3. Attached hereto as **Exhibit B** are true and correct copies of .pdf file renderings of web pages appearing at the website located at www.vietnam.gov.vn (which redirects to a website located at www.chinhphu.vn) and at the website located at www.hochiminhcity.gov.vn on February 5, 2008. These web pages begin at the home page of the "Social Republic of Vietnam – The Government Website" website located at

www.vietnam.gov.vn, continue to the English language home page appearing at the website located at www.vietnam.gov.vn, continue to the “Sitemap” link of the website located at www.vietnam.gov.vn, continue to the “Ho Chi Minh City” link under the “Local governments” section of the aforementioned “Sitemap” web page, continue to the www.hochiminhcity.gov.vn link at the immediately aforementioned page, continue to the “Ting Viet” link at the immediately aforementioned page, and continue to the “Sở Kế hoạch và Đầu tư” link at the immediately aforementioned page, which leads to the splash page for the Department of Planning and Investment of Ho Chi Minh City’s website located at dpi.hochiminhcity.gov.vn, which in turn leads to the last web page contained in Exhibit B: the home page for the Department of Planning and Investment of Ho Chi Minh City’s website located at dpi.hochiminhcity.gov.vn.

4. Attached hereto as **Exhibit C** are true and correct copies of .pdf file renderings of web pages appearing on February 5, 2008 at the web site for the Department of Planning and Investment of Ho Chi Minh City located at dpi.hochiminhcity.gov.vn.
5. Attached hereto as **Exhibit D** is a true and correct copy of a certified translation of the final web page found in Exhibit C hereto from the web site for the Department of Planning and Investment of Ho Chi Minh City (located at dpi.hochiminhcity.gov.vn/vie/webappdn/view.asp?id=4112023930&ht=&loaihin=DT&HienThi=1) as that web page identically appeared on February 1, 2008. This translation indicates that the Ho Chi Minh City Department of Planning and Investment states at its website located at dpi.hochiminhcity.gov.vn that the “Business license issuance date” for the “Crab Restaurant” located at “157-Le Thanh Ton-Ward Ben Thanh-District 1” was September 20, 2006, approximately three months after defendant Kevin Vu swears he opened his San Jose restaurant under the name “The Boiling Crab” on or about June 20, 2006, and more than eight months after defendant Kevin Vu swears that he saw the restaurant located at that address in Ho Chi Minh City while traveling in Vietnam between December 2005 and approximately January 16, 2006.
6. Attached hereto as **Exhibit E** is a true and correct copy of a document provided by the

1 President of my client, Dada Ngo, to my firm on or about February 5, 2008. I believe this
 2 document to be substantively identical to the final web page found in Exhibit C hereto
 3 from the web site for the Department of Planning and Investment of Ho Chi Minh City
 4 (located at dpi.hochiminhcity.gov.vn/vie/webappdn/view.asp?id=
 5 4112023930&ht=&loaihin=DT&HienThi=1). I have been informed by my client that:
 6 the document attached hereto as Exhibit E was obtained by Duy Nguyen – who works for
 7 a company by the name of THAM TU TU VIET MY located at Cong Ty Cung Cap
 8 Thong Tin Luong Gia(LuongGia.Co) 355/39 Su Van Hanh(ND).P12.Q10.Ho Chi Minh,
 9 VIETNAM, Tel : (08) 6122 334 -0908.39.39.01 - (08) 2428881 - 0909.39.39.02 – who
 10 then (i) had the copy “certified” by one of the clerks in the office of the Department of
 11 Planning and Investment of Ho Chi Minh City (meaning, I believe, that the clerk signed
 12 and stamped Mr. Nguyen’s copy of the document), and then (ii) sent the document
 13 attached hereto as Exhibit E via international overnight courier to his satellite office
 14 located at 14746 Bushard #B, Westminster, CA, Phone: (714) 468-4294, where Dada
 15 Ngo’s father, Wing Ngo, picked up the document and provided it to Dada Ngo, who in
 16 turn provided the document attached hereto as Exhibit E to this firm on or about February
 17 5, 2008.

18 Nhahangcua.com

- 19 7. Attached hereto as **Exhibit F** is a true and correct copy of the WHOIS record for the
 20 domain name nhahangcua.com, obtained from the website located at www.whois.net,
 21 which I caused to be printed on February 6, 2008. Paragraph 4 of the Supplemental
 22 Declaration of Christopher Hays in Opposition to Motion for Preliminary Injunction filed
 23 with the Court on February 6, 2008, states that “the nhahangcua.com website” is the
 24 source of the menu of “the Vietnam ‘Boiling Crab’ Restaurant” produced by defendant at
 25 Bates number D000068, a copy of which was attached as Exhibit D to the Supplemental
 26 Declaration of Christopher Hays. Page 2 of the WHOIS record attached hereto as Exhibit
 27 F (which bears the Bates number TBC 000423) indicates that the domain name
 28 nhahangcua.com was registered on November 16, 2006, *i.e.*, it states that the “Creation

1 date” of the domain name nhahangcua.com was “16 Nov 2006.”

2 Kitwu.com

- 3 8. Attached hereto as **Exhibit G** is a true and correct copy of the WHOIS record for the
 4 domain name kitwu.com, obtained from the website located at who.godaddy.com, which
 5 I caused to be printed on February 6, 2008. The Supplemental Declaration of Christopher
 6 Hays in Opposition to Motion for Preliminary Injunction filed with the Court on February
 7 6, 2008, attaches several printouts from the website located at kitwu.com and states that
 8 “[Sunday] 4 March” – a date referred to on the website located at kitwu.com – “first
 9 appeared on a Sunday before 2003 in the year 2001, and did not appear on a Sunday
 10 again until the year 2007” (at ¶ 9). Page 1 of the WHOIS record attached hereto as
 11 Exhibit G (which bears the Bates number TBC 000424) indicates that the domain name
 12 kitwu.com was registered on January 11, 2007, *i.e.*, it states that the domain name was
 13 “Created on” “11-Jan-07.”
- 14 9. Attached hereto as **Exhibit H** is a true and correct copy of a .pdf file rendering of a web
 15 page appearing at the website located at kitwu.com on February 7, 2008, which I caused
 16 to be printed on February 7, 2008. This print out states that the “Itinerary” and “Travel
 17 Documents” sections were “Updated” on “02/22/2007” and that the “Saigon To Do List”
 18 section was “Updated” on “02/17/2007.”
- 19 10. Attached hereto as **Exhibit I** are true and correct copies of .pdf file renderings of web
 20 pages appearing at the website located at kitwu.com on February 6, 2008, which I caused
 21 to be printed on February 6, 2008. These print-outs contain calendars for February 2007
 22 and March 2007, and what appear to be calendar entries for certain dates associated
 23 therewith. The calendar for February 2007 includes the word “Leaving” for the date
 24 February 23, 2007, and the calendar for March 2007 includes the words “Location – Hoi
 25 An” for the date March 4, 2007.

26 Defendant’s New Restaurants

- 27 11. Attached hereto as **Exhibit J** is a true and correct copy of a screen capture of a web page
 28 appearing at the website located at yelp.com on or about February 4, 2008, which I

caused to be printed on or about February 4, 2008. This web page refers to a restaurant called “The Boiling Crawfish” located at “2333 Irving St (between 24th Ave & 25th Ave) San Francisco, CA 94122” and includes nine reviews for this restaurant. Excerpts from the review from “Daisy V” of “Richmond, CA” dated 01/27/2008, found at the last page of Exhibit J hereto, include: “I took my bf to this restaurant because I had them while I was in Los Angeles. ... We bought the medium spicy because I wasn’t sure how spicy it was there than in orange county. ... It was everything like the one in orange county, except for the season fries and chicken wings. ... All I wanted was the crawfish boiling in that broth that they serve in orange county.” Excerpts from the review from “swys” of “San Francisco, CA” dated 02/02/2008, found at page 2 of Exhibit J hereto, include: “I love that T.B.C. menu is limited to messy eating love that they do well ... T.B.C. is def- a new gem in this neck of the hood.” Excerpts from the review from “I.D. Cloaker” of “San Francisco, CA” dated 01/27/2008, found at page 3 of Exhibit J hereto, include: “I don’t know where they get the crawfish. But their size is not consistent. Some of them are good sized, but most of them are rather small. ... The unevenness in size tells me the owner probably doesn’t have a good, reliable source for the crawfish.” The review from “sean c.” of “San Francisco, CA” dated 01/21/2008, found at the last page of Exhibit J hereto, states: “absolutely the rudest staff ever!!!”

12. Attached hereto as **Exhibit K** is a true and correct copy of a .pdf file rendering of a web page appearing at the website located at chowhound.com on February 5, 2008, which I caused to be printed on or about February 5, 2008. This web page refers to a restaurant called “Boiling Crawfish (New) Outer Sunset” and includes various posted comments about the restaurant. The following is an excerpt from the comment posted by “Xiao Yang” on Jan 19, 2008 at 8:17 p.m., at pages 1-2 of Exhibit K hereto: “the same guy owns a ‘Boiling Crawfish’ place in Sacramento.” The following is an excerpt from a comment posted by “junesix” on January 20, 2008 at 5:10 p.m., at page 2 of Exhibit K hereto: “It is part of the same Boiling Crawfish chain in Sacramento and San Jose.” The following is an excerpt from a comment posted by “PorkButt” on January 21, 2008 at

1 6:04 p.m., at page 3 of Exhibit K hereto: "I think that the Louisiana style crawfish boils
2 have come up here via transplants from Louisiana and Houston through Southern
3 California. There have been these types of restaurants opened by ethnic Vietnamese in
4 the Westminster[, Orange County] area for a few years now." The following is an
5 excerpt from a comment posted by "Xiao Yang" on January 21, 2008 at 7:42 p.m., at
6 page 3 of Exhibit K hereto: "The owner of Boiling Crawfish may be ethnic Vietnamese,
7 judging from his name (Kevin Vu)."

8 13. Attached hereto as **Exhibit L** is a true and correct copy of a .pdf file rendering of a web
9 page appearing at the website located at sf.eater.com on February 5, 2008, which I caused
10 to be printed on or about February 5, 2008. This web page refers to the Boiling Crawfish
11 restaurant located at "2333 Irving Street, between 24th and 25th, the Sunset; (415) 663-
12 6033; Mon-Thu 3pm-10pm, Fri-Sun 12pm-10pm." Page 2 of Exhibit L hereto refers to
13 the restaurant's "quizzical 3pm opening time." The following is an excerpt from the
14 "Comment #3" dated 01/17/08 at 11:18 p.m., at page 4 of Exhibit L hereto: "I'm a big fan
15 of the Cajun crawfish restaurants in Garden Grove (Southern California) so I was eager to
16 try out this new spot."

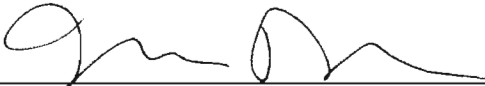
17 ///

18 ///

1 14. Attached hereto as **Exhibit M** is a true and correct copy of a print-out of a web page
2 appearing at the website located at yelp.com on or about February 5, 2008, which I
3 caused to be printed on or about February 5, 2008. This web page refers to a restaurant
4 called "The Boiling Crawfish" located at "6835 Stockton Blvd, Ste 450, Sacramento, CA
5 95814" and includes one review for this restaurant. Excerpts from that review, from
6 "Misa W" of "Sacramento, CA" dated 01/20/2008, found at pages 1-2 of Exhibit M
7 hereto, include: "they go to SMF in the morning to pick up fresh Louisiana crawfish ...
8 Hence, the later opening time each day (3-10pm). ... The owner has 2 other branches in
9 SF and SJ."

10 I declare under penalty of perjury under the laws of the United States that the
11 foregoing is true and correct.

12 Executed this 7th day of February, 2008 at San Francisco, California.

13 
14 _____
Michael W. De Vries